

Sm. Rina Nandi Vs The State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: March 20, 1975

Acts Referred: Maintenance of Internal Security Act, 1971 " Section 3(1)(a)(ii), 3(2)

Citation: (1975) 1 CALLT 349 : (1976) CriLJ 56 : 79 CWN 946

Hon'ble Judges: Sudhamay Basu, J; Bimal Chandra Basak, J

Bench: Division Bench

Judgement

Bimal Chandra Basak, J.

This application for a writ of Habeas Corpus is directed against an order of detention passed by the

Commissioner of Police, Calcutta the respondent No. 2 herein on the 2nd of December, 1974 in exercise of the powers conferred by subsection

(1) (a) (ii) read with Sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 (hereinafter referred to as the said Act) The

said order was passed with a view to preventing the detenu. Shyamal Nandi, from acting in any manner prejudicial to the security of the State. The

incidents relied up- on the grounds of detention served on the detenu are as follows :

(1) You being a leader of the Revolutionary Communist Unity Centre (Marxist-Leninist), now Communist Unity Centre (Marxist-Leninist), in West

Bengal along with others including Biswanath Mukherji of Khardah attended a secret meeting of the said party held in a house at Seal's Garden

Lane, Calcutta on 16-9-1974 wherein you along with other participants of the meeting including the said Biswanath Mukherji deeded organise the

people, particularly, the peasants. to start armed guerilla .action in West Bengal, particularly in rural areas, with the avowed object of capturing the

State power by overthrowing the present lawfully established Govt. in the State.

(2) You were arrested on 12-10-1974 from your residence at 23, Paikpara Row, Calcutta when a large number of leaflets, booklets, circulars,

etc., including those mentioned below were seized from your possession on the said date (12-10-74).

(i) Copy of a printed English booklet captioned ""Draft path of Indian Revolution"", issued by the Andhra Pradesh Communist Committee

(Revolutionaries), inter alia, declaring that the advanced elements of working class should help the peasantry in organising armed struggle and

directing the cadres that such armed struggle should be started in the countryside and after liberating the countryside they should go over to cities

and towns to liberate the people and thereby to undermine the lawfully established Government in the State,

(ii) Copy of a cyclostyled English document captioned "'On the method of work'" inter alia, directing the cadres of the party to build up a people's

army and establish base areas in the rural belt and to encircle the cities from the countryside by waging a relentless armed struggle and ultimately to

capture the political power in the country,

(iii) Copy of a cyclostyled English document dated 15-5-74, entitled "'Task of the Communists'", amongst other things, directing the party activities

to wage war in guerilla method at the initial stage in order to build stable base areas and broaden their jurisdiction more and more and to develop

the same into stages of mobile and regular warfare by forming the people's army with the object of seizing the State power.

Your above activities are prejudicial to the Security of the State and if you are left free and unfettered, you are likely to continue to undermine the

Security of the State in similar manner as aforesaid

You are hereby informed by virtue of Section 8 (2) of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971) that disclosure of facts,

other than those already disclosed above, is considered to be against public interest.

2. Mr. Acharya, the learned Advocate appearing in support of the Rule, firstly, contended before us that the grounds are vague and that the detenu

was prevented from making an effective representation as a result thereof. In this context he pointed out that in the first ground it has been stated

that the secret meeting was held "'in a house at Seal's Garden Lane, Calcutta'". According to Mr. Acharya, such expression is vague and more

particulars should have been furnished in respect of the house where such meeting is alleged to have taken place. According to him the number of

the house or any other description to identify the house eg. the name of the owner or the tenant of the said house should have been specified.

According to Mr. Acharya, in the absence of those particulars the detenu was not in a position to make an effective representation. In this context

Mr. Acharya has also drawn our attention to the supplementary affidavit affirmed on behalf of the petitioner wherein it has been alleged that the

Seal's Garden Lane is a big lane and consists of many houses with their respective Municipal numbers. It is alleged that there are altogether 90

houses in that lane. Similarly, in respect of the first ground it was stated that though the date was specified as 2nd December. 1974, the time at

which such meeting is alleged to have taken place had not been specified. According to Mr Acharya, if the time of the alleged meeting had been

specified, then he could have made representations and produced sufficient materials before the authorities concerned to the effect that at the

relevant time he was present elsewhere and could not have attended the said meeting. In this context Mr. Acharya relied on a certificate granted by

the Divisional Manager, Accounts Department. Life Insurance Corporation of India, Calcutta Divisional Office a copy of which has been annexed

to the petition. In the said Certificate it has been stated that the detenu, who was an Assistant in the Accounts Department of the said Office, was

present in the office on 16th of September, 1974 as per attendance Register. Mr. Acharya submitted that in the absence of the specific time being

mentioned in the said grounds he could not produce any other document. Regarding the second ground also, Mr. Acharya similarly sought to

contend that the grounds are vague inasmuch as, though the date of the incident has been given as 12th October, 1974 but the particular time has

not been specified. It was similarly argued by Mr. Acharya that if the time had been specified the detenu could have made an effective

representation against his detention. It was further submitted that the use of the words "including those mentioned below" is vague. For all these

reasons Mr. Acharya contended that the grounds are vague and that the detenu was prevented from making an effective representation.

3. We have carefully examined the contentions of Mr. Acharya. u/s 8 (1) of the said Act when a person is detained in pursuance of a detention

order, the authority making the order shall communicate to him the grounds on which the order has been made and shall afford him the earliest

opportunity of making a representation against the order. It is to be pointed out that Sub-section (2) of Section 8 of the said Act provides that

nothing in sub-section. (1) shall require the authority to disclose the facts which it considers to be against the public interest to disclose. In the

present case, in the grounds of detention itself reference was made by the detaining authority to Sub-section (2) of Section 8 of the said Act and it

was stated that disclosure of facts other than those already disclosed in the said grounds was considered to be against public interest This position

was reiterated by the detaining authority in his affidavits affirmed in this proceeding. It is also to be remembered that in the present case the order

has been passed on the ground of security of State. Having regard to above, we are unable to hold that the grounds are vague. Similar situation

arose in the case of Vakil Singh Vs. The State of J. and K. and Another, wherein also the order of detention was made on the ground of "security

of State.

4. Apart from the question of Sub-section (2) of Section 3 of the said Act, we are also not satisfied that the grounds served on the detenu suffer

from vagueness as contended by Mr. Acharya. It is now well settled that the grounds must be communicated in clear and unambiguous terms

giving as much particulars as will facilitate making an effective representation in order to satisfy the authorities concerned¹ that the order is

unfounded or invalid. *Bishwanath Prasad and Others Vs. Dwarka Prasad and Others*, . The grounds must be read as a whole. One portion or

word cannot be read isolatedly out of its context. *Commissioner of Income Tax, Andhra Pradesh Vs. Dhanrajgiri Raja Narasingirji*, , *Netaipada*

Shah Vs. The State of West Bengal, . Read as a whole they must be reasonably clear and self-sufficient to bring home to the detenu the

knowledge of the grounds of his detention. Apart from conclusion of facts ""grounds"" have a factual constituent also and they must contain the pith

and substance of primary facts but not subsidiary facts or evidential details. *Vakil Singh Vs. The State of J. and K. and Another*, .

5. The grounds mean all the basic facts and materials which have been taken into account by the detaining authority in making the order of

detention and on which, therefore, the order of detention is based. *Khudiram Das Vs. The State of West Bengal and Others*, . Some vagueness

regarding inessential or inconsequential matters cannot affect the validity of an order of detention. *Dwarka Dass Bhatia Vs. The State of Jammu*

and Kashmir, . A detenu is not entitled to know the evidence or the source of information *Har Jas Dev Singh Vs. State of Punjab and Others*, .

Applying this test we are satisfied that the grounds served on the detenu are not vague. The requirement as to the communication of all essential

constituents of the grounds were complied with in the present case. The basic facts, as distinguished from factual details, were incorporated in the

materials communicated to the detenu. In respect of the first ground the detenu was informed about the date and the place of incident. The detenu

was described as a leader of a particular party. The name of the one of the associates has been given. It was described as a secret meeting The

decision taken in that secret meeting was also communicated in the ground. So far as the second ground is concerned, the date and the place of the

incident has been given. Detailed particulars about the seized books, leaflets etc. have also been specified. The facts which were not disclosed

were not basic facts and non-disclosure of the same could not have affected the detenu's right of making an effective representation. Further the

details which were not disclosed were not essential constituents of the grounds of detention. The basic materials and the substance of the primary

facts were given in a clear and unambiguous term which was sufficient to enable the detenu to make an effective representation. For the .foresaid

reasons we reject this contention of Mr. Acharya.

6. It was next contended by Mr. Acharya that ground No 2 was not germane to the object of the order. It was submitted by Mr. Acharya that the

substance of the allegations made in the said ground was that when he was arrested on 12th of October 1974 large number of booklets. leaflets

and circulars etc.. were seized from his possession. Mr. Acharya submitted that even if the booklets related to some matters which are prejudicial

to the security of the State, mere possession of the same by the detenu cannot be sufficient for the detaining authority to reach the subjective

satisfaction that the detenu has been ""acting in a manner prejudicial to the security of the State."" It was submitted by Mr. Acharya that it has not

been alleged that he was either the writer or the publisher of the said booklets etc Accordingly, mere possession as such cannot be germane to the

object of the order of detention. On behalf of the respondents it was admitted that mere possession without anything else would not attract the

security of the State."" But it was submitted that we should not read the ground No. 2 isolatedly but we should read it in the context of the ground

No. 1 which was an earlier incident. It was submitted on behalf of the respondents that we should read the ground No. 2 and No. 1 as a composite

ground and as a part of a series of incidents It was submitted that read as such it would be clear that the possession of the books was under the

circumstances germane to the object of the order.

7. It is to be considered first whether, and if so when, we can test the validity of a ground (whether on the question of vagueness or on the question

of relevancy) in the light of some other ground or grounds of detention. The second question is whether such interlinking is possible in the facts and

circumstances of this case. The third question is whether the ground No. 2 is to be held relevant due to such ""interlinking"".

8. In the case of Sudhir Kumar Saha Vs. The Commissioner of Police, Calcutta and Another, three incidents were relied on in the ground of

detention. It was held that the three incidents mentioned in the grounds were stray incidents spread over a period of one year and four months. In

this context it was stated that these three incidents could not be interlinked. Though it was held in that case that the grounds did not amount to a

disturbance of the maintenance of the public order, this decision suggests that in the facts and circumstances of a particular case interlinking of

ground is possible for the purpose of ascertaining the validity of a particular ground.

9. The case of Nishi Kanta Mondal Vs. State of West Bengal, is more to the point. In that case the order of detention was passed under West

Bengal (Prevention of Violent Activities) Act, 1970 (hereinafter referred to as the 1970 Act) There were two incidents referred to in the grounds

of detention. The first incident took place on 12th of February, 1971 when the detenu with his associates being armed with bombs and other lethal

weapons attacked S.D.O. Bongaon and his guard by hurling bombs and thereby caused injuries to the guard constable when they came out on

hearing sounds of explosion of bombs near the quarters of the Magistrate 1st Class, Bongaon. The substance of the second incident narrated in the

grounds of detention was that on 23rd of February, 1971, on search of a house, the Police recovered three high explosive bombs and some

explosive materials from the detenu and his associates' possession. It was argued on behalf of the detenu that the grounds of detention were not

germane to the object for which a person could be ordered to be detained under the Act in question. The Supreme Court considered the effect of

Section 3 of the Act in question with particular reference to Clause (d) of Sub-section (2) thereof which provided that for the purpose of Sub-

section (1) the expression "'acting in a manner prejudicial to the security of the State or the Maintenance of Public Order'" inter alia meant:

Committing or instigating any person to commit, any offence punishable with death or imprisonment for life or imprisonment for a term extending to

7 years or more or any offence under the Arms Act, 1950 or the Explosive Substances Act, 1908, where the commission of such offence disturbs

or is likely to disturb public order.

It was observed that it was manifest from the above definition that the expression "'acting in any manner prejudicial to the maintenance of public

order'" would include the commission of an offence under the Explosive Substances Act when the commission of such offence disturbs or is likely

to disturb public order. Regarding the incident of 12th of February, 1971 it was pointed out that this clearly brings the case within the ambit of

Clause (2) of Sub-section (3) of the Act in question. Regarding the second incident, it was pointed out. that the fact that three high explosive

bombs and explosive materials were recovered from the possession of the petitioner and his associates on search of house, it was clear that the

petitioner was . guilty of an offence under the Explosive Substances Act. It was observed that it was obvious that the use of high explosive bombs

was likely to disturb public order. In this context the earlier incident was referred to and it was pointed out that it gives a clear indication of the

propensity of the petitioner to use and explode such bombs. This case is a clear indication that in a given circumstances the Court may look into

other incidents referred to in the grounds for the purpose of finding out whether the impugned ground was germane to the object of the detention.

The facts of the case before us are also somehow similar to the facts of the said case. Here also certain booklets etc., which advocated certain

actions prejudicial to the security of the State were seized from the possession of the detenu. Following the ratio of this case, the writ petition in

Batul Chandra Ghosh Vs. The State of West Bengal, was dismissed. The order made in this case and the ground served on the detenu are similar

in all material aspects to the order made and grounds served on the detenu concerned in the other writ petition.

10. In the case of Samaresh Chandra Bose and Others Vs. The District Magistrate, Burdwan and Others, . there were two grounds. It was urged

that both grounds are vague because the expression ""political opponents"" used therein had not been explained with precision. In this context it was

pointed out by their Lordships that this contention was not correct inasmuch as in ground No. 1 it was clearly stated that the petitioner and his

associates belong to C. P. I. (M), with a view to reduce their political opponents to submission and passivity, being armed with lethal weapons

etc., stabbed Shri Jiten Choudhury, a driver of D.S.P. (Durgapur Steel Project) Bus belonging to the C.P.I, (emphasis supplied). Accordingly it

was held that the political parties are, therefore, quite clearly and specifically referred to in ground No. 1 and it cannot be said that the petitioner

was kept in the dark or that he was unable to understand the reference to the political opponents in this ground and was, therefore, not in a

position to make a proper, effective representation. In ground No. 2, there was no reference to C.P.I, such as is found in ground No. 1. In this

context their Lordships held as follows:

But in our opinion ground No. 2 has to be read and understood in the light of the reference made to the political opponents in ground No. 1. The

two grounds have to be read together in this respect as they are clearly interlinked. Reference in ground No. 2 to a series of interparty clashes on

October 8, makes the position further clear. Ground No. 2 states that the petitioner's act was intended to cow down the police and the .political

opponents by terror for promoting the objectives of the party to which he belonged. The petitioner's party being clearly specified in ground No. 1

which is interlinked with ground No, 2, the challenge on the ground of vagueness or ambiguity in ground No. 2 must be held to be devoid of merit.

11. The next case to be considered is the. case of Babul Mitra Vs. State of West Bengal and Others, . Two incidents were relied upon in the

grounds of detention. The allegation made in the first incident was to the effect that the detenu with his associates forced into a school and

prevented the school staff from giving them any resistance with threat of violence and that they set fire to the school building as a result of which the

school had to be closed down sine die. The allegations made in the second incident was to the effect that the police arrested the detenu with a

bomb in his hand. It was also alleged that the detenu had also made attempt to throw the bomb on the police personnel at the time of his arrest

with a view to killing them. It was held that the first ground was clearly connected with "Public Order". Regarding the second ground it was

observed that in the preamble to the grounds of detention, it was stated that the detenu has been acting in a manner prejudicial to the maintenance

of public order as evidenced by the grounds "taken separately and collectively". In this context it was stated that accordingly it would be legitimate

to assess the community impact of the second ground in the background of the first ground. It was further stated that the two grounds read

together, disclose the petitioner's concerted scheme of making public institutions and public servants the target of his violence. It was further stated

that this scheme sheds lights on the potentiality of the second ground. Read in such manner, it was held that the activity specified in the second

ground was bound to affect public order. This decision is also an authority for the proposition that under certain circumstances we can read one

ground in the context of another. It is true that in the present case the expression "separately and collectively" is not there in the preamble but in

the body it is stated that "above activities" of the detenu are prejudicial to the security of the State.

12. The next case to be considered is Dr. Ramakrishna Rawat Vs. District Magistrate, Jabalpur and Another, . In that case the particulars of the

grounds specified in the grounds of detention were given in the schedule annexed thereto. In paragraph 10 of the schedule to the grounds,

allegations were made "to the effect that the detenu was responsible for organizing of a Bandh or a hunger strike. It was alleged on behalf of the

detenu that organising a Bandh or a hunger strike was an innocuous act and did not by itself had any direct connection with the maintenance of

public order Rejecting this contention it was held by the Supreme Court that the contents of paragraph 10 are to be read as a whole and as a part

of series of incidents enumerated in the preceding paragraphs 7, 8 and 9. It was observed that the petitioner was being painted in all these incidents

as the prime-mover of the gear which resulted in disturbances accompanied by violence, looting and mischief on a wide scale. It was also held that

these particulars are not irrelevant to the object of detent on and that on the basis of these activities the detaining authority could reasonably gauge

the tendency of the petitioner to act in a manner prejudicial to the maintenance of public order in future.

13. The last case of this series is Ram Bahadur Rai Vs. The State of Bihar and Others, . In that case, the grounds of detention served on the

detenu referred to several incidents. On behalf of the State of Bihar it was argued that the ground;, of detention ought to be read as one composite

document, whereas on behalf of the detenu it was contended that each one of the grounds forms a distinct and separate reason for detention and

ought to be examined separately on its own merits, Commenting on the same, it was observed by their Lordships that considering the facts stated

in the various grounds, both parties had over pitched their respective cases. It was observed that the grounds of detention do not furnish intrinsic

aid to justify the conclusion that all of them are inter-related. It was further observed that nor was there any material placed before the Court from

which the Court could conclude that the petitioner could be said to have had notice of such interplay of the ground on another.

14. After such detailed examination of grounds Nos. 1 and 2 their Lordships found it impossible to accept the contention on behalf of the State that

the grounds Nos. 1 and 2 referred to a series of continuous events woven together by a common intention as contended on behalf of the State. It

was held that the grounds Nos. 1 and 2 must be read disjunctively each one referring to a distinct episode, It was further held that one is not a

sequel to the other and the validity of the two grounds has to be determined independently on the merits of each case. So far as the other"" grounds

are concerned, it was held that such motivation can be seen in the incidents referred to in the other grounds. After a detailed examination of the

grounds Nos. 3 to 7 it was held that the said ground may, therefore, be read legitimately as constituting a composite, inter-connected indictment

comprising events which followed in quick succession as a part of the same pre-planned objective.

15. From the aforesaid decisions. it is clear that the extreme view that under no circumstances one ground may be read together with or in the

context of any other ground for examination of its validity, cannot be accented. It cannot be said that in each and every case each ground must be

read separately, independently and isolatedly without any reference to any other grounds. It is also clear that the other extreme view that as a

matter of course all the grounds are to be read together in each and every case is also not correct. The correct approach is to follow a middle path.

It all depends on the facts and circumstances of a particular case. Interlinking of the grounds is possible only when there is some material from

which the Court can come to a conclusion that one ground is linked with the other. It is only when the two or three grounds are part of a same

series of transactions or part of a common intention or motivation or one is a sequel to the other or which can be construed as a composite,

interconnected indictment that one ground can be read in the context of the other. When the ""grounds referred to distinct episodes and one is not a

sequel to the other or do not form part of a series of continuous events woven together by a common intention the grounds must be read

disjunctively and the validity of each of the grounds to be determined independently.

16. We are well aware that it is now well settled that if one ground is bad then the whole order of detention is bad inasmuch as one cannot

predicate to what extent the bad ground had influenced the mind of the detaining authority and whether the detaining authority could have reached

its subjective satisfaction regarding the necessity of the detention of the detenu in the absence of such bad ground. The conclusion we have arrived

that in certain circumstances, for the purpose of examination of the validity of one ground, we can look into other grounds does not militate against

this well settled principle. In the circumstances of a case when one ground can be interpreted with reference to another, they are really a part of a

series of one transaction. To put it differently, in such a case though there are more than one ground in form, in substance there is actually only one

ground. i.e. several transactions in one series. In that view of the matter the question of one ground being bad the whole order of detention being

bad, would not arise because the ground must be read as a whole.

17. Applying this test in the facts of the present case, we find that the purpose of the meeting mentioned in the first ground was to organise the

people, particularly the peasants with the object of starting armed guerilla action in West Bengal, particularly in the rural areas with the avowed

object of capturing the State power by overthrowing the present lawfully established Government in the State. Read in this light it is clear that the

ground No. 2 is obviously connected with the ground No. 1. From the detailed descriptions of the booklets etc., referred to in the ground No. 2 it

is clear that these also relate to organisation of armed struggle by the peasants, liberation of the countryside and thereafter liberation of the people

in the cities and ultimately overthrowing the lawfully established Government in the State, thereby capturing political power. It is clear that the

subject-matter of the booklets etc. referred to in the second ground have obvious connection with the object of the meeting referred to in the first

ground. It is also to be remembered that the detenu is described as the leader of the group referred to in ground No 1. Therefore, it is apparent that

it was with the object of giving into effect the decisions taken in the meeting referred to in ground No. 1. that the booklets etc. referred to in the

ground No. 2 were possessed by the detenu. Possession of these booklets etc. was part of a series of one transaction. Holding of the meeting and

possession of the books etc were with the common intention. In our opinion the grounds Nos. 1 and 2 are not distinct episodes but one is a sequel

to the other. Accordingly, the validity of the ground No 2 before us must be determined not isolatedly or disjunctively but in the context of the

ground No. 1. Both the grounds are to be read as constituting a composite, interconnected indictment and as a part of one single pre-planned

objective, in our opinion the ground No. 1 is certainly germane to the object of the order. This was also not disputed by Mr. Acharya. If the

second ground is read along with the first ground in the light of observations made hereinabove, we have no hesitation in holding that the second

ground also has a rational relation to the subjective satisfaction regarding the prejudicial activity imputed to the petitioner. Accordingly, we reject

the contention of Mr. Acharya.

18. It was next contended by Mr. Acharya that the grounds are baseless and non-existent. In this context it was alleged that the detenu never

attended the alleged meeting referred to in ground No. 1. It was alleged that he joined his duties on that particular day at the Divisional Office and

was present in his Office from 10 a. m. till 5 p.m. In this connection reliance was placed on a certificate issued by the Divisional Officer (A/cs.) of

the said office. It was further stated that thereafter the detenu attended the chamber of his advocate from 6 p.m. to 9-30 p.m. and thereafter went

home and was present at his residence thereafter on the alleged date, it is alleged that the ground No. 1 is concocted and the detenu never

attended the meeting. It was further alleged that the ground No. 2 is also false and vague and that the papers and books referred to therein were

never recovered from the custody of the detenu as alleged. It was also stated that the detenu had no knowledge about Biswanath Mukherjee

referred to in ground No. 1. It was further stated that the detenu never acted in any manner for overthrowing the Government as alleged. In answer

to the same the Commissioner of Police that is. the detaining authority has affirmed an affidavit wherein he has stated that before he made the

detention order in question, he scrutinised carefully the facts, informations and materials supplying the grounds for detention. It was further stated

that he was satisfied that the activities of the detenu, as mentioned in the grounds are prejudicial to the security of the State as envisaged under the

said Act. It was further stated that after a careful consideration of all the informations, facts and materials placed before him he was personally

satisfied that with a view to preventing the detenu from acting in any manner prejudicial to the security of the State, his detention was necessary and

that the instant order of detention was made without any ulterior motive or purpose. It was denied that the detenu did not attend the meeting held

on 16th September. 1974. It was not admitted that the detenu was present in his office or in the chamber of his Advocate throughout the period

mentioned in the petition. It was also denied that the detenu went home and was present at his residence as alleged. In this context the statement

contained in the grounds was repeated and reiterated. In connection with ground No. 2 similar stand was taken by the detaining authority.

19. Generally speaking, the facts stated in the grounds of detention are final and the Court cannot examine the veracity of the allegations made

therein. The Court cannot, as a general rule go into the question of sufficiency. *Samaresh Chandra Bose and Others Vs. The District Magistrate,*

Burdwan and Others, ; Dadarao Vs. The State of Maharashtra, ; Khagen Sarkar v. State of West Bengal AIR 1971 SC 2051 : 1971 Cri LJ

1456). However, the Court can set aside an order if it is passed mala fide or on extraneous grounds. The Court has power to set aside an order

of detention when the ground is baseless or non-existent. *Khagen Sarkar v. State of West Benezal AIR 1971 SC 2051:1971 Cri LJ 1456*); *Motilal*

Jain Vs. State of Bihar and Others, ; Rameshwar Lal Patwari Vs. State of Bihar, and Dwarika Prasad Sahu Vs. The State of Bihar and Others, ;

Borjahan Gorey Vs. The State of West Bengal, and Biram Chand Vs. State of Uttar Pradesh and Others, The Court can also set aside an order

when on the material available to the detaining authority, it was impossible to arrive at the conclusion that was arrived at by the detaining authority.

Srilal Shaw Vs. The State of West Bengal and Others, . Accordingly, when specific and relevant allegations are made in the petition regarding mala

fide or blamelessness, it is the duty of the detaining authority to affirm an affidavit dealing with the same. In such limited cases, if there is no return to

the Rule, if there is no affidavit by the detaining authority controverting the allegation made in the petition, then such allegations remain

uncontroverted and unanswered and the Court is bound to accept the same and hold the detention to be illegal. *Sk. Hanif v. State of West Bengal*

AIR 1971 SC 679 : 1974 Cri LJ 606 Mohd. Alam Vs. State of West Bengal, ; Jagdish Prasad Vs. The State of Bihar and Another, . In the facts

and circumstances of this case, having regard to the nature on the averments made in the affidavit of the detaining authority controverting the

allegations made in the petition, we are unable to hold that the grounds are baseless or non-existent. Accordingly, we reject this contention of Mr.

Acharya.

20. It was last argued by Mr. Acharya that the order has been made mala fide and in colourable exercise of power. In this context Mr. Acharya

has relied on some averments made in the petition and the supplementary affidavits. Shortly put, the allegation of the detenu is that the detenu was

and still is a trade union worker and was elected as General Secretary of the Life Insurance Workers Union, Calcutta Divisional Office. It is

alleged that the detenu was an active trade union worker and owing to rivalry between two different groups of the Union, a title suit was instituted

by the detenu being Title Suit No. 552 of 1974 in the City Civil Court at Calcutta wherein an order of injunction was passed on 22nd April, 1974.

For alleged violation of such an order of injunction, a petition for contempt was filed on behalf of the detenu and again an order of injunction was

passed on 23rd May, 1974. It is alleged that in view of such proceeding ""certain persons"" wanted to implicate the detenu in some criminal matters.

It is- further alleged that 12th October, 1974 was the date fixed for further hearing of the contempt application before the City Civil Court at

Calcutta, it is alleged that on 11th October, 1974 some Police Officer from Chitpur Police Station along with several other officers came to the

residence of the detenu at about 3 A. M. and searched his house where some cyclostyled papers etc.. were found. It is alleged that the detenu was

taken to the Chitpur Police Station and there he was told that he was arrested in connection with certain murder case. Thereafter, the detenu was

implicated in another case of rioting and produced before the Additional Metropolitan Magistrate, Calcutta. It was further stated that the police

authorities, who arrested the detenu from his house on the morning of 12th of October, 1974, seized certain documents and papers which were

described to have been recovered from the possession of the detenu on 12th of October, 1974 in ground No. 2 mentioned before. It is alleged

that the detaining authority had full knowledge of such seizure but they did not take any action for the purpose of passing the impugned order. It is

alleged that no such action was taken because the detaining authority knew that the detenu never acted in any manner prejudicial to the security of

the State. It is alleged that the petitioner was falsely implicated in these two criminal cases and that it was not possible for the police authority to

harass the detenu by keeping him illegally detained for the said cases and accordingly the said cases were withdrawn. It is alleged that the order

has been made mala fide because the detaining authority was not really satisfied about the part played by the detenu. In answer to this, in his

affidavit the detaining authority has denied all these allegations. We have already referred to some of the relevant averments. He has stated that

after being fully satisfied the order was passed by him. It was denied that the order was passed with any ulterior motive or purpose. In connection

with the criminal cases it has been stated that the detaining authority had no knowledge about the same and in and event the allegation of the detenu

in respect of the same are irrelevant inasmuch as the same has no connection with the order of detention Taassed in this case. It was categorically

stated that the facts of none of the criminal case torn, the subject-matter of any one grounds of detention. Regarding the time taker for passing the

order of detention it V"fac stated that some time was taken for analysing and studying the implication of the materials relating to the grounds of

detention concerning the detenu collected by the investigating police officer. It was stated that the Commissioner of Police, Calcutta has to

discharge daily a large number of statutory and administrative functions and that the detention order in the instant case was made by him as early as

possible. It was specifically denied that the detaining authority had in any way acted with any mala fide intention. Having regard to the specified

avermments made by the detaining authority in his affidavit, it is not possible for us to hold that the order of detention was passed mala fide with any

ulterior motive or in colourable exercise of the power. Accordingly, we reject this contention of Mr. Acharye

21. All the contentions, raised in support of the Rule fail. We are also satisfied that the statutory requirements and the constitutional safeguards

have been duly complied with in the facts of this case. For the aforesaid reasons we dismiss the application and discharge the Rule.

22. Oral prayer for a certificate for leave to appeal to Supreme Court is rejected as no ground for the same is put forward before us by the learned

advocate for the petitioner.

Sudhamay Basu, J.

23. I agree to the conclusions arrived at by my learned brother with regard to various points raised on behalf of the petitioner. Only I would like to

add a few words in relation to the question whether and to what extent, in at all, interlinking of different grounds is possible My learned brother has

in this connection ably considered the cases of Sudhir Kumar Saha Vs. The Commissioner of Police, Calcutta and Another, Nishi Kanta Mondal

Vs. State of West Bengal, ; Babul Mitra Vs. State of West Bengal and Others, ; Dr. Ramakrishna Rawat Vs. District Magistrate, Jabalpur and

Another, and Ram Bahadur Rai Vs. The State of Bihar and Others, . I agree with him that the facts in Nishi Kanta Mondal"s case have some

resemblance to the facts in the instant case. Some of the decisions of the Supreme Court undoubtedly make it open to a Court to examine one of

the grounds ""in the background of other or in the context of some earlier incidents involved in other grounds, The second ground in the present

case may, therefore, be examined, as my learned brother has done, in the background of the first. The second ground by itself, to my mind, is not

relevant to the object of detention but by the process of linking with the other ground it has been said to be germane. I concur I should only like to

add a note of caution in definitely spelling out. till such time as the Supreme Court chooses to clearly evolve a principle or define the area, as to

where, when and in what circumstances interlinking would be permissible to impair the distinctiveness of each ground. Even in the case of Ram

Bahadur Rai Vs. The State of Bihar and Others, , Chandrachud, J, dismissed the contention of the Advocate-General in that case that the

Detaining Authority assessed the cumulative effect of the activities of the detenu while passing the order of detention founded on distinct and sepa-

1 rate grounds: if any one of the grounds is vague or irrelevant, the entire order must fail. The satisfaction of the detaining authority being subjective,

it is impossible to predicate whether the order of detention would have been passed in the absence of those vague or irrelevant data. This principle

which ensures to the benefit of the detenu should not be allowed to be eroded more than what is strictly warranted by the decisions. In the recent

case of Khudiram Das Vs. The State of West Bengal and Others, Bhagawati, J. remarked that ""Human mind does not function in compartments.

When it receives impression from different sources it is the totality of the impressions which goes into the making of the decision and it is not

possible to analyse and dissect the impressions and predicate which impressions went into the making of the decision and which do not nor is it an

easy exercise to erase the impression created by particular circumstances so as to exclude the influence of such impression in the decision making

process.

24. The above analysis of the working of human mind while, it highlights the composite nature of all incidents, on the totality of whose impressions

subjective satisfaction is formed, also significantly lays down a sound foundation for the well settled principle that one off the grounds being bad,

the entire order is invalidated. To my mind up-till now the principle of interlinking in this sense, i.e the totality of impressions of all the incidents in

the grounds thought not explicitly stated has been the very basis for invalidating the order of detention when one of the other grounds was found to

be bad. Some of the recent decisions in the process of interlinking whereby distinctiveness of the grounds are done away with, in certain

circumstances, has the effect, if I may say so with respect of finding additional source of strength for a weak ground in others. This tends to

negative the other principle referred to above. Again, reading one ground in the light of other grounds is a matter of interpretation but to read two

or more such grounds as com- posite ones amounts to something more than mere interpretation besides disturbing the principle which has so long

ensured to the benefit of the detenu. Undoubtedly all the incidents in all the grounds in their totality form the basis of the subjective satisfaction of

the detaining authority. In that sense they are all interlinked. But is it not for the detaining authority to choose what ground he would treat to be

separate? After he lays down certain grounds to be distinct is the Court, in course of its interpretation competent to alter that? On the basis of well

settled principles, prima facie, it would seem impermissible for the Court to disturb the objective basis of satisfaction and treat certain grounds to

be not distinct although the detaining authority has stated them to be so. In short, in considering plural grounds, interlinking seems to have been

resorted to in two ways; (i) by examining one ground in the light of another or more grounds; (ii) by treating two or more grounds, as if, they are

parts of one composite ground. Difficulty is felt, as explained earlier, specially with regard to (ii) in the absence of a clear enunciation of principle

and specially, as it tends to erode the well established principle, viz., if one ground is bad the entire order is invalid. Till these aspects are examined

comprehensively and till the Supreme Court lays down a general principle a cautious approach seems to be warranted. It must however, be made

clear that in view of the case of Ram Bahadur Rai Vs. The State of Bihar and Others, , it must be accepted and we do so with respect that under

certain circumstances two or more grounds may be treated in a composite manner.